

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| IMMANUEL SHELTER, INC., | § | |
| | § | No. 224, 2018 |
| Appellee Below, | § | |
| Appellant, | § | Court Below: Superior Court |
| | § | of the State of Delaware |
| v. | § | |
| | § | C.A. No. S17A-09-001 |
| KENNETH BARTHOLOMEW and | § | |
| JOHN R. ZAWISLAK, | § | |
| | § | |
| Appellants Below, | § | |
| Appellees. | | |

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|-------------------------|---|-----------------------------|
| IMMANUEL SHELTER, INC., | § | |
| | § | No. 294, 2018 |
| Appellee Below, | § | |
| Appellant, | § | Court Below: Superior Court |
| | § | of the State of Delaware |
| v. | § | |
| | § | C.A. No. S17A-08-003 |
| JOHN D. HARTIGAN, | § | |
| | § | |
| Appellant Below, | § | |
| Appellee. | § | |

Submitted: June 22, 2018

Decided: July 24, 2018

Before **VAUGHN, SEITZ**, and **TRAYNOR**, Justices.

ORDER

This 24th day of July 2018, it appears that:

(1) The above-captioned appeals—No. 224, 2018 and No. 294, 2018—were filed by the appellee-below/appellant, Immanuel Shelter, Inc., from the

Superior Court's memorandum opinion of March 28, 2018, which jointly decided two administrative appeals from the Sussex County Board of Adjustment's approval of Immanuel Shelter's application for a special use exception. Appeal No. 224, 2018, from the memorandum opinion entered in C.A. No. S17-A-09-001, was filed on April 27, 2018. Appeal No. 294, 2018, from the memorandum opinion entered in C.A. S17A-08-003, was filed on June 4, 2018, following the Superior Court's denial of a motion for award of costs filed by appellant-below/appellee, John D. Hartigan on April 5, 2018. Immanuel Shelter has filed a motion to consolidate appeal No. 224, 2018 and appeal No. 294, 2018.

(2) A notice of appeal in a civil case must be filed within thirty days after entry upon the docket of the judgment or order from which the appeal is taken.¹ "It is fundamental that the appellate jurisdiction of this Court rests wholly upon the perfecting of an appeal within the period of limitations fixed by law."² Because appeal No. 294, 2018 was filed on June 4, 2018, sixty-eight days after the docketing of the Superior Court's March 28, 2018 memorandum opinion, the Clerk issued a notice directing Immanuel Shelter to show cause why appeal No. 294, 2018 should not be dismissed as untimely filed.

¹ Del. Sup. Ct. R. 6(a)(i).

² *Fisher v. Biggs*, 284 A.2d 117, 118 (Del. 1971).

(3) In response to the notice, Immanuel Shelter argues that the thirty-day appeal period from the March 28 memorandum opinion in C.A. No. S17-08-003 was tolled by the motion for costs filed on April 5, 2018, because the motion sought costs under 9 *Del. C.* § 6198(g), which requires a judicial determination that the Board of Adjustment acted with gross negligence, bad faith, or malice when approving Immanuel Shelter's application for a special use exception. Immanuel Shelter's argument is without merit. It is well-settled that a pending motion for costs does not toll the finality of a judgment.³ Immanuel Shelter's failure to file its notice of appeal within thirty days of the March 28 memorandum opinion in C.A. No. S17-08-003 leaves this Court without jurisdiction to consider appeal No. 294, 2018.⁴

NOW, THEREFORE, IT IS ORDERED that appeal No. 294, 2018, is DISMISSED. The Clerk shall issue a brief schedule in appeal No. 224, 2018. The motion to consolidate is moot.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Justice

³ Del. Super. Ct. Civ. R. 58(3); *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321, 323 (Del. 2004) (quoting *Emerald Partners v. Berlin*, 811 A.2d 788, 791 (Del. 2001)).

⁴ *Cahall v. Thomas*, 889 A.2d 966, 968 (Del. 2005).